

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

CWP No. 618 of 2006.

Date of Decision: 25th August, 2006.

Rajiv Kapila

.. Petitioner.

Versus

State of Himachal Pradesh & Others

.. Respondents.

Coram

The Hon'ble Mr. Justice V.K. Gupta, Chief Justice.

The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting?¹

For the petitioner:

Mr. Ajay Mohan Goel, Advocate.

For respondents No.1,3 & 5:

M.S. Chandel, Advocate General, with Mr. J.K. Verma, Deputy Advocate General.

For respondents No.2:

Mr. S.R. Sharma, Advocate.

For respondents No.4:

Mr. M.A. Khan, Central Government Counsel.

V.K. Gupta, C.J. (Oral)

With the consent of learned Co0unsel for the parties, this petition is taken up for final disposal today without formally admitting to hearing.

Apparently the Medical Council of India sent a communication on 3rd September, 2004 to the Principal, Indira Gandhi Medical College, Shimla, asking him to stop admissions in M.S. (Ortho.) and D. Ortho qualifications from

¹ Whether the reporters of Local Papers may be allowed to see the judgment?

the academic session starting in that year in view of certain observations made in that letter. The contents of this letter, which have been shown to us by Mr. Chandel today, read thus:-

“Medical Council of India.

No.MCI-63(22)/2004-Med./

Date

The Principal,
Indira Gandhi Medical College,
Shimla-171001.

Sub: Himachal Pradesh University- Recognition of
D.Ortho. qualifications in respect of students being
trained at Indira Gandhi Medical College, Shimla.

Sir,

I am to state that the Postgraduate Committee of this Council at its meeting held on 4.8.2004 considered the Council Inspector's report (July, 2004) on the standard of examination and other teaching facilities available at Indira Gandhi Medical College, Shimla for purpose of recognition of D. Ortho. qualification granted by Himachal Pradesh University. The Committee decided as under which I am directed to convey herewith for your information and necessary action:-

“The Postgraduate Committee considered the Council Inspector's report (July, 2004) and decided not to recommend recognition of D.Ortho qualification granted by Himachal Pradesh University in respect of students being trained at Indira Gandhi Medical College, Shimla because-

- (i) No Associate Professor in Unit-I.
- (ii) Teaching complement is incomplete in both the units in terms of faculty.
- (iii) Promotion of Incharge Unit-II is not as per MCI norms.
- (iv) Other deficiencies/observations as pointed out in the inspection report.

The Committee further decided to direct the institution authorities to henceforth stop admissions

in M.C. (Ortho.) & D.Ortho. qualifications for the ensuing academic session.”

You are therefore requested to stop admission in MS (Orth.) & D.Orhto. courses from the ensuing academic sessions.

Two copies of the above inspection report are enclosed herewith.

Yours faithfully,

Sd/-

(Lt. Col. Dr. ARN Setalvad) (Retd.)
Secretary.

Endst. No. No.MCI-63(22)/2004-Med./ 14018 Date 3.9.2004.

Copy alongwith a copy of above inspection report is forwarded for information necessary:-

1. The Registrar, Himachal Pradesh University, Summer Hill, Shimla- 171005.
2. The Director of Medical Education & Research, Block No.18B, SDA, Complex, Kasumpti Shimla-171 009.

Sd/-

(Lt. Col. Dr. ARN Setalvad) (Retd.)
Secretary.”

It appears that the State Government felt that the aforesaid communication from the Medical Council of India was not acceptable to it, and it accordingly took up the matter with the Central Government. The Central Government vide communication No. U.1201/9/06-M.E(P-II)pt. dated 29th June, 2006, addressed to the Secretary, Medical Council of India, informed the Medical Council that it is not for the Medical Council to direct the Institutions to stop admissions in any Course because in terms of Section 19 of the Indian Medical Council Act, 1956, if any Institution is found lacking in facilities in running any course, the Council has to make a representation to the Central Government, for stoppage of admission in that Course. Since the Council did not make any such

representation for such stoppage of admission to the Central Government, the act of the Council was illegal because as per section 19 (supra) it is only the Central Government which has the authority to stop admission to any Course. For ready reference the text of the aforesaid letter dated 29th June, 2006 is reproduced hereunder, which reads thus:-

“I am directed to say, that it has been brought to the notice to the Central Govt. that admission to M.S.(Ortho) course at Indira Gandhi Medical College, Shimla has been stopped by the MCI. The College Authorities stated to be running M.S.(Ortho) course since 1985 and is already recognized under section 11(2) of IMC Act and included in the Schedule to IMC Act as recognized qualification under Himachal Pradesh University. Section 19 of IMC Act provide that if any institution is lacking facilities in running any course, the Council shall make a representation to the Central Govt. for de-recognition/stoppage of admission in the said course(s). No such representation for stopping admission/de-recognition of the course has been received by the Central Govt. from the Council. As per provision of IMC Act it is only the Central Govt. which has the authority to re-recognize/stop admission in any medical institution recognized under Section 11(2) of IMC Act. If Council feels that college is lacking facilities they should made necessary representation/recommendations in this regard as per the provisions of IMC Act. Till such recommendations are made by the Council the College is entitled to continue with the admissions in M.S.(Ortho) course with already approved intake by the MCI.”

As is evident, the Central Government took a decision that the College is entitled to continue with the admissions in the M.S.(Ortho) Course till such time as the recommendation is made by the Council for stopping the admissions. The copies of this communications were endorsed to the Principal

Secretary (Health), Government of Himachal Pradesh as well as the Registrar, Himachal Pradesh, University and the Principal, Indira Gandhi Medical College, Shimla.

The petitioner's contention is that the petitioner despite having been admitted in the General Surgery Post Graduate Course, is interested in being admitted in the M.S. (Ortho.) Course and, therefore, the respondents should be directed to hold a counselling for such admission based upon the aforesaid decision of the Central Government.

In the reply filed by the respondents, they appear not to have taken any note of the aforesaid decision of the Central Government and they unnecessarily are relating back to a decision of the Medical Council of India which admittedly has been set aside by the Central Government. This stand of the respondents is untenable and is also contrary to Section 19 of Indian Medical Council Act, 1956, which clearly vests the powers of withdrawal of recognition or the stopping of the admissions in a Course only in the Central Government and that too in accordance with the procedure prescribed therein.

We have heard the learned counsel for the parties and perused the record of the case. We have carefully gone through Section 19 of the Indian Medical Council Act, 1956 and do find that in this Section a comprehensive, detailed and elaborate procedure has been prescribed which relates to the issue of stoppage of admissions in a course, apart from other related issues. This Section lays down that where upon a report by the Committee the Council finds that the Course of study and examination to be undergone in, or the proficiency required from the candidate at any examination held by a University

or a Medical College etc. etc. do not conform to the standards prescribed by the Council, it shall make a representation to that effect to the Central Government. Upon receipt of such representation the Central Government may send it to the State Government or the Medical Institution concerned. Sub-sections (2) and (3) lay down that the State Government shall have the matter examined and may make appropriate recommendations to the Central Government. As per sub-section (4), after receiving the recommendations from the State Government, the Central Government may make further inquiry if it thinks fit to do so and thereafter may take appropriate consequential action which may include the action of stoppage of admissions in a Course in a Medical Institution or a University.

In the present case, neither the Central Government passed any order stopping admissions in the M.S. (Ortho.) Course nor was the procedure prescribed under Section 19 (supra) followed in any manner. What therefore emerges clearly is that the Council had no power and jurisdiction by itself to order respondent No.3 to stop admissions in M.S. (Ortho.) Course. By taking a correct view the Central Government has set aside the aforesaid action of the Medical Council and has directed the College to continue with the admissions in M.S. (Ortho.) Course. This action of the Central Government is wholly unassailable.

Based upon the aforesaid reasoning this petition is allowed. The respondents are directed to hold the counselling for admission in the Course of M.S. (Ortho.) immediately and to complete the process within one week from today and to select the eligible candidate(s) under the Rules.

CMP No. 1032 of 2006.

No order, in view of the order passed in the main petition. This application is disposed of.

**(V.K. Gupta),
Chief Justice.**

August 25, 2006.
(rc).

**(Surjit Singh),
Judge.**